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June 23, 1992

Office of the Secretary  
Federal Communications Commission  
1919 M Street NW, Room 222  
Washington, DC 20554

Federal Communications Commission  
Office of the Secretary

Re: Telephone Consumer Protection Act of 1991  
CC Docket No. 92-90

To the Commission:

Mktg., Inc. respectfully submits these comments on issues presented in the Commission's Notice of Proposed Rulemaking in this matter. Mktg., Inc. is a firm professionally engaged in survey research regarding a wide variety of technical, scientific and other questions. Among Mktg., Inc.'s principal concerns is to promote professionalism in the survey research industry and to advance the public interest in activities relating to survey research/public opinion polling.

Mktg., Inc. respectfully requests that the Commission promulgate regulations expressly exempting survey research firms from the prohibited use of autodialers to initiate telephone calls to residential telephone lines pursuant to 47 U.S.C. § 227(b)(2)(B)(ii). Mktg., Inc. believes such an exemption is consistent with the aims of Congress in enacting the Telephone Consumer Protection Act.

47 U.S.C. § 227(b)(2)(B)(ii) permits the Commission to exempt from being prohibited such calls to residential telephone lines as the Commission determines fall within the class or category of calls that

"(I) will not adversely affect the privacy rights that this section is intended to protect; and (II) do not include the transmission of any unsolicited advertisement."

Telephone calls made by survey research companies fall within this category.

The Telephone Consumer Protection Act is aimed at the abuses that take place when automated telephone calls deliver artificial or prerecorded messages. The use of such artificial or prerecorded messages leads to such problems as: (1) the inability of the person called to interact

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with the caller and express his displeasure; (2) failure of the prerecorded message to disconnect the line even after the person has hung up, thus preventing the person from being able to use his own phone; and (3) answering machine tapes being filled with prerecorded messages, thus preventing other parties from leaving messages that may be of importance to the person owning the machine. These problems, which were cited by the Senate Committee on Commerce, Science and Technology in reporting the Senate Bill, surely constitute serious invasions of a residential telephone user's privacy. S. Rep. 102, 178, to accompany Bill S. 1462, September 19, 1991.

However, telephone calls made by survey research companies do not create any problems of these sorts. Telephone calls made by survey research companies utilize one of two methods, neither of which gives rise to the concerns raised by the Committee. The predominant method used by survey research companies is the manual call, in which a person makes the telephone call and speaks to the person answering the phone. This type of call is not covered by the Telephone Consumer Protection Act as it does not constitute an automatic telephone dialing system.

The other method uses what is known as predictive dialing. Predictive dialers automatically dial telephone numbers and immediately deliver answered calls to live representatives of the company. The live representative then asks the person answering the phone if he or she would be willing to take part in a survey. If the person consents, the representative continues the conversation. If the person declines, the representative thanks the person and immediately hangs up.

Thus, it should be apparent that survey research companies' use of predictive dialers in no way adversely affects any of the privacy concerns that prompted the Telephone Consumer Protection Act. First, the person answering the phone is talking to a live representative from the very beginning. If the person is displeased by receiving the call, he or she can immediately tell the representative. Second, because the live representative immediately hangs up upon request, the person's phone line is immediately restored to him or her. The person answering the phone is never denied the use of his phone once the call has ended. Third, because the predictive dialer only delivers calls answered by live people to the representative, answering machine tapes are not filled with messages from the survey research company.

The fact that survey research telephoning does not adversely affect privacy interests of residential telephone owners is corroborated by the finding of the House Committee on Energy and Commerce, which expressly stated "[survey] research has generated relatively few complaints from subscribers." H.R. Rep. No. 317, 102d Cong. 1st Sess. 13 (1991).

Because survey research firms' telephone calls do not adversely affect the privacy concerns implicated in the Telephone Consumer Protection Act, any calls that do not include the transmission of an unsolicited advertisement should be exempted from the restrictions of paragraph (b)1(B) of the Act regarding calls to residential telephone lines. It is true that some calls purporting to be survey research do include the transmission of an unsolicited advertisement. Such calls are clearly not exempted from the restrictions of paragraph (b)1(B). However, survey research, which according to survey research industry ethics, do not include

unsolicited advertisements, should be exempted from the restrictions of paragraph (b)1(B) inasmuch as they satisfy paragraph (b)2(B)(ii) in that they do not adversely affect protected privacy rights.

A regulation creating such an exemption would be consistent with the intent of Congress, not only under paragraph b(2)(B)(ii), but also under paragraph (a)(3) of the Act. Paragraph (a)(3) defines "telephone solicitation" as the "initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services..."

Survey research does not fall within this definition, as recognized by Congress. In its report to the House of Representatives, the House Committee on Energy and Commerce stated, "the Committee does not intend the term "telephone solicitation" to include public opinion polling, consumer or market surveys, or other research conducted by telephone." H.R. Rep. No. 317, 102d Cong. 1st Sess. 13 (1991). The Senate Committee on Commerce, Science and Energy also stated that "the Committee does not intend the term "unsolicited telephone solicitation" to include survey research." S. Rep. No. 177, 102d Cong., 1st Sess. 5 (1991).

Inasmuch as none of the privacy concerns addressed by Congress in the Telephone Consumer Protection Act are implicated by the use of predictive dialers in survey research telephoning, and inasmuch as Congress recognized that the Act should not include survey research that does not contain unsolicited advertisements, Mktg., Inc. respectfully requests that the Commission promulgate regulations expressly exempting survey research firms from the prohibited use of autodialers to initiate telephone calls to residential telephone lines pursuant to 47 U.S.C. § 227(b)(2)(B)(ii), or by extension, within the meaning of proposed Federal Regulation § 64.1100.

Respectfully,

A handwritten signature in cursive script, reading "Steven H. Gittelman".

Steven H. Gittelman, Ph.D.  
President